IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO.3287 OF 2004

IN

CRIMINAL APPEAL NO. 932 of 2004

Mrs.Parvin P. Farzandi .. Applicant

versus

State of Maharashtra & ors. .. Respondents

...

Ms.Nisha Valani for the applicant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 1st December 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP appearing on behalf of the State.

2. Delay in filing the appeal is condoned for reasons stated in the Criminal Application. Appeal

no. 932 of 2004 is taken up for hearing forthwith.

3. Appeal has been filed by the original complainant against the judgement and order dated 17th January 2003. By the said order, the Addl. Sessions Judge has directed that the gold rod at Article B before the Court should be forfeited by the State Government after the period of appeal is over and thereafter to keep it in safe custody of the registrar of the court.

4. The complainant has preferred a complaint for return of property in Sessions Case no.327 of 1998. The Addl.Sessions Judge in the said case directed that Article nos.1 and 2 should be handed over to the PW no.1 on execution of a bond in the sum of Rs.1,000/- each. In the said case, the trial Court on accused no.2 was kept in abeyance and subsequently accused no.2 was separately tried in Sessions Case no. 327 of 1998. The Addl.Sessions Judge in the said case however has passed the impugned order directing that Article B should be forfeited by the State Government.

5. In the earlier trial, the complainant had identified his wrist watch and melted gold piece. In my view, the Addl. Sessions Judge in S.C. No.327 of

1998 ought to have referred to the earlier order which was passed by the Sessions Court in Sessions Case no.327 of 1998 when original accused no.1 was tried. He could not have passed an order which is contrary to the earlier order passed by his predecessor.

6. In the result, the impugned order dated 17th January 2003 passed by the Addl.Sessions Judge directing the State Government to forfeit the gold piece at Article B is quashed and set aside. The order passed by the Sessions Judge dated 4th April 2000 is upheld. The appeal is allowed in the above terms.

7. Certified copy is expedited.

V.M. KANADE, J